

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORNELL D. DESHAZER,

Defendant-Appellant.

UNPUBLISHED

September 20, 2007

No. 272076

Oakland Circuit Court

LC Nos. 2001-181438-FH

2005-202410-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted, challenging his prison sentence of 2-1/2 to 30 years for a plea-based conviction in Docket No. 2005-202410-FH of uttering and publishing, MCL 750.249. The trial court ordered the sentence be served consecutive to a one-year jail sentence defendant imposed in Docket No. 2001-181438-FH because defendant was on bond in the latter case when he committed the offense in the former case. Defendant argues that the imposition of a consecutive sentence violated a plea-bargained sentence agreement and that he is entitled to specific performance of the alleged agreement. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Initially, the relief defendant requests, i.e., specific performance, is not available for an alleged violation of a preliminary evaluation made pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). There is no authority holding that a defendant has a right to specific performance of the court's preliminary evaluation. Moreover, the *Cobbs* Court held that "[t]he judge's preliminary evaluation of the case does not bind the judge's sentencing discretion, since additional facts may emerge during later proceedings, in the presentence report, through the allocution afforded to the prosecutor and the victim, or from other sources." *Id.* at 283. Rather, "a defendant who pleads guilty or nolo contendere in reliance upon a judge's preliminary evaluation with regard to an appropriate sentence has an absolute right to withdraw the plea if the judge later determines that the sentence must exceed the preliminary evaluation." *Id.*

In any event, the record does not support defendant's claim that his sentence exceeded the preliminary evaluation of the trial court. As defendant concedes in his brief on appeal, when he entered his plea, the trial court made no representations concerning whether it intended to impose a consecutive or concurrent sentence. Rather, the court only expressed its intent to impose a sentence within the sentencing guidelines range, which it did.

Relying on *People v Jackson*, 203 Mich App 607; 513 NW2d 206 (1994), defendant also argues that the trial court should have granted his request for an evidentiary hearing to allow him to develop a record concerning whether counsel advised him that the sentences would not be imposed consecutively. Defendant made this request only in connection with his request for specific performance of the alleged *Cobbs* agreement. Defendant never moved to withdraw his guilty plea, nor does he seek that relief on appeal,¹ thus distinguishing this case from *Jackson*. Rather, defendant only seeks specific performance of the alleged *Cobbs* agreement, a remedy that is not available in this case, regardless of counsel's alleged representations. Thus, the trial court did not err in denying defendant's request for an evidentiary hearing.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder

¹ Defendant is precluded from claiming on appeal that the plea was not an understanding, voluntary, or accurate one because he did not move to withdraw the plea in the trial court. See former MCR 6.311(C), amended effective January 1, 2006, and now codified as MCR 6.310(D).